

No. 2411.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

EDWARD STROECKER, as Trustee of the
Estate of H. J. Patterson, a Bankrupt,

Appellant,

vs.

MARIAM A. PATTERSON and H. J.

PATTERSON,

Appellees.

BRIEF ON BEHALF OF APPELLEE

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Clerk.

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The property in controversy in this action is an undivided quarter interest in the Daly Bench placer mining claim on Eva Creek, in the Fairbanks Recording District, Alaska, and the royalties which accrued to said interest from mining operations carried on by H. C. Hamilton, lessee, after November 27, 1911.

Appellant contends that said quarter interest and royalties were the property of H. J. Patterson when he was adjudged bankrupt.

The appellee Mariam A. Patterson claims that H. J. Patterson, her husband, never was the real owner of

that property; that she purchased it with her own money, through her husband, and is entitled to the property and the royalties.

Appellant's principal witness was H. J. Patterson. Appellant, the plaintiff below, having thus vouched for his credibility, the witness testified very clearly that the money invested in the land was his wife's separate property; that he himself did not invest anything therein; that he took title to the property in his own name on November 10, 1911, without her knowledge and contrary to her wishes; that as soon as he got the deed she asked him to convey the property to her (Tr. p. 98), which he did seventeen days thereafter.

No estoppel was pleaded, and it does not appear that any of H. J. Patterson's debts were incurred during the time that the legal title to the property stood in his name.

"The judgment debtor having put nothing into the property, his creditors can take nothing out of it."

Gladstone Lumber Co. v. Kelly, 129 Pac., 763.

On September 19, 1910, James Wickersham owned the whole of the Daly Bench. On that day he agreed with H. J. Patterson to convey to him a quarter interest in the property, and the latter agreed to sink a hole upon the premises and to do the assessment work for the year 1910 without any expense to Wickersham (Tr. p. 48). This was the agreed purchase price for the quarter interest. At the same time Wickersham leased the claim to H. J. Patterson on condition that he would work steadily and continuously on the premises. This lease

was forfeited for breach of this condition (Tr. p. 49). But the purchase price for the quarter interest was paid, and in recognition thereof Wickersham made a deed of it to H. J. Patterson, dated October 14, 1911, but delivered November 10, 1911 (Tr. p. 61). However, the purchase price was not paid by H. J. Patterson, but by his wife, Mariam A. Patterson (Tr. p. 56). After H. J. Patterson had made his agreement with Wickersham, he made an agreement with his wife that if she would pay for the sinking of the hole and doing the assessment work for 1910 with her own funds, she should have the quarter interest (Tr. pp. 55, 57). To this she assented and paid the sum of \$225 for doing the work, out of her own money, which she had originally received as proceeds of a mining claim located by her in the Yukon Territory (Tr. p. 53). She loaned part of this money to her husband and his partner, Hosler, in 1905, taking a note for it (Tr. p. 53), which was subsequently paid and the proceeds deposited in her bank account (Tr. p. 75), upon which she drew the check for \$225 that paid for the work done to purchase the quarter interest (Tr. p. 57). When Wickersham was about to execute the deed for this quarter interest, these facts were known by him, and he was requested by H. J. Patterson to make the deed to his wife because she had paid for it (Tr. pp. 62, 80); to this Wickersham objected, since the writings had been made with the husband, but suggested that the husband take the deed and then convey the property as he wished. This he did in 17 days after he got the deed, and then transferred the legal title thus

vested in him to his wife in performance of his prior parol agreement with her, and her performance of its conditions and the conditions of the agreement with Wickersham (Tr. p. 65).

The statute of frauds therefore has no application.

Sproul v. Atchison Nat. Bank, 22 Kan., 340.

Cresswell v. McCaig, 9 N. W., 52.

— A careful scrutiny of the testimony will show that there is not a particle of evidence tending to prove that any creditor of H. J. Patterson gave him a dollar's worth of credit on the faith of his being the actual owner of this property, or of his having the agreement with Wickersham. The work he did on this property, under the lease from Wickersham, was all paid for with his own money. There is no evidence that any creditor was deceived by the fact that the legal title stood in H. J. Patterson's name from November 10, 1911, to November 27, 1911. E. R. Peoples testifies for plaintiff that about twelve days after the conveyance from Wickersham to H. J. Patterson he learned that fact, but all he asked the latter to do was to give him security upon the land for a debt already owing (Tr. p. 107).

Hence the wife has not estopped herself from claiming the property.

Hews v. Kenney, 62 N. W., 204.

When H. J. Patterson made said agreement with his wife, about September 19, 1910, he owed nobody (Tr. p. 74). At that time the Daly Bench had no known value. No paystreak had yet been discovered on the property and the wife's investment was a speculation.

Her husband at that time had money of his own (Tr. p. 55), but he wanted to use it in carrying on mining operations, and not in purchasing the property.

When Wickersham delivered to H. J. Patterson a deed to the quarter interest, he also gave him another lease on his, Wickersham's remaining three-fourths of the claim. This lease H. J. Patterson subsequently transferred to H. C. Hamilton, and at the same time, November 27, 1911, he gave Hamilton a lease on the quarter interest, the legal title to which then stood in his, Patterson's name, upon a royalty of five per cent of the gross output; thereafter H. J. Patterson conveyed the legal title to the quarter interest to his wife. This conveyance of the reversion entitled her to the rents and royalties subsequently accruing.

In re Owsley's Estate, 142 N. W., 134.

West Shore Mills Co. v. Edwards, 33 Pac., 987.

Tiffany on Real Property, secs. 47, 360.

24 Cyc., 1172.

11 Am. & Eng. Enc. Law (2d ed.), 841.

At the time of the conveyance from Patterson to his wife, nothing had been found on the Daly Bench, and its value was a guess (Tr. p. 32). Pay had been found on the "Happy Home" claim adjoining, but the owners of that claim did not believe that any substantial part of that pay extended into the Daly Bench (Tr. p. 32). Wichman was one of the owners of the "Happy Home," and for this reason they compromised their claim to the whole of the Daly Bench by accepting a 75-foot strip thereof and relinquishing their claim to the balance (Tr. p. 32).

Under his lease from Wickersham, H. J. Patterson did some work on the claim, but found nothing, and then transferred the lease to Hamilton, while he, Patterson, went to mining on Engineer Creek, where he incurred the debts which caused his bankruptcy.

During the trial the principal exceptions by plaintiff were to the ruling of the Court permitting liberal cross-examination of his witness, H. J. Patterson. Appellee contends that the rulings of the Court were proper. Plaintiff endeavored to show by the witness that Mariam A. Patterson was not a bona fide holder for value prior to the adjudication in bankruptcy, and the cross-examination was directed to bring out the actual consideration Mariam A. Patterson gave for the property.

However, a defendant may show that the plaintiff has no cause of action by cross-examination of the plaintiff's witness.

Ah Doon v. Smith, 34 Pac., 1093.

But even if the Court relaxed the rule and allowed the cross-examination to extend to other matters pertinent to the issue, judgment would not be reversed for that reason.

Wills v. Russell, 100 U. S., 621; 25 L. ed., 607.

The evidence shows, without contradiction, that Mariam A. Patterson owned a mining claim in the Yukon Territory; worked it a while and then sold it; loaned part of the proceeds to a partnership composed of her husband and one Hosler; took their note, which was subsequently paid and the proceeds deposited in her bank account; with \$225 of this she purchased the quarter interest from Wickersham through her husband. Being

property owned by her, her husband had no such interest in it as would make her or her property liable for his debts.

Compiled Laws of Alaska, Sec. 439.441.443.489.490.560

Plaintiff did not attempt to show that Mariam A. Patterson in any manner participated in the alleged fraud of her husband, or that she had the remotest idea that in transferring the legal title to the quarter interest to her, her husband intended to defraud his creditors, or to do anything else than carry out the agreement he had made with her when she paid the purchase price of the property. It was necessary for plaintiff to show that she participated in such intent, if there was any.

Atkinson v. McNider, 105 N. W., 504. *Lane & Myers* 14

Bush v. Export Storage Co., 136 Fed., 918.

Holt Manfg. Co. v. Bennington, 132 Pac., 30.

Mrs. Patterson wanted the deed made direct to her from Wickersham, and her husband tried to have this done; as soon as she learned that he had received the deed she asked him to convey the title to her (Tr. p. 98). This he did in 17 days thereafter. Her failure to immediately enforce her husband's promise does not estop her from relying on the deed in execution of the promise.

Blake v. Meadows, 30 L. R. A. N. S., 1.

Where a man purchases land with money derived from the separate estate of his wife, though he may take title in his own name, she is equitably the owner, and a subsequent conveyance of the land by the husband to the wife cannot be assailed by his creditors.

14 Am. & Eng. Enc. Law (2d ed.), 258.

Martin v. Remington, 76 N. W., 614.

Hews v. Kenny, 62 N. W., 204.

Kemp v. Folsom, 43 Pac., 1100.

Garner v. Second Nat. Bnk., 151 U. S., 420; 14 Sup Ct., 390.

Gehres v. Wallace, 80 Pac., 273.

Wright v. Wright, 89 N. E., 789.

Farnham v. Trussell, 10 N. W., 20.

Note page 256, Vol. 127, Am. St. Rep.

20 Cyc., 375.

Mrs. Patterson was the equitable owner from September 22, 1910, when she completed payment of the purchase price of the land. The transfer to her by the holder of the legal title on November 27, 1911, although without pecuniary consideration, is not a voluntary conveyance nor fraudulent as to creditors.

Stanton v. Crane, 58 Pac., 54.

Patterson did not sell the land to his wife, neither was he indebted to her when the agreement and the deed were made. But at a time when he was solvent he had the opportunity to buy the quarter interest; he gave this opportunity to his wife; she bought with her own money; the deed was made to him when it should have been made to her; she promptly asked for a deed from him (Tr. p. 98) and he gave it to her. She was therefore the equitable owner of the land by reason of her moneys having paid for it, and the conveyance of the title to her by her husband was not voluntary, but upon good consideration.

Schreyer v. Scott, 134 U. S., 406; 10 Sup. Ct., 579.

Bigelow on Fraudulent Conveyances, p. 558. note.

And when Patterson conveyed the legal title to his wife because she had performed the conditions of the agreement between him and her and the conditions of the Wickersham agreement (Tr. p. 65), such act cannot be deemed fraudulent.

Cottrell v. Smith, 18 N. W., 865.

The property in controversy was conveyed to Mariam A. Patterson November 27, 1911; the grantor, H. J. Patterson, was adjudged bankrupt on April 16, 1912, upon his own petition filed that day; the plaintiff proceeded against defendant under the provisions of section 70e of the National Bankruptcy Act; he could not recover if the evidence showed that Mariam A. Patterson was a bona fide holder for value prior to the date of the adjudication. We submit that the Court below was right in holding that plaintiff was not entitled to the relief claimed in his complaint.

A. R. HEILIG,

Attorney for Appellee Mariam A. Patterson.

Dated Fairbanks, Alaska,

September, 1914.